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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/658,463	09/10/2003	Michael Sussan	21239.00	2198

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LITMAN LAW OFFICES, LTD  
PO BOX 15035  
CRYSTAL CITY STATION  
ARLINGTON, VA 22215

EXAMINER
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RUNNING, RACHEL A

ART UNIT	PAPER NUMBER
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3732

DATE MAILED: 07/21/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/658,463

Applicant(s)

SUSSAN, MICHAEL

Examiner

Rachel A. Running

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 9/10/03.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 9 and 15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

3. Claim 9 recites the limitation "of said second pair of clamping means" in line 2. There is insufficient antecedent basis for this limitation in the claim. However, it will be examined as understood.

4. Claim 15 recites the limitation "of said first and second pair of clamping means" in lines 1 and 2. There is insufficient antecedent basis for this limitation in the claim. However, it will be examined as understood.

### ***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

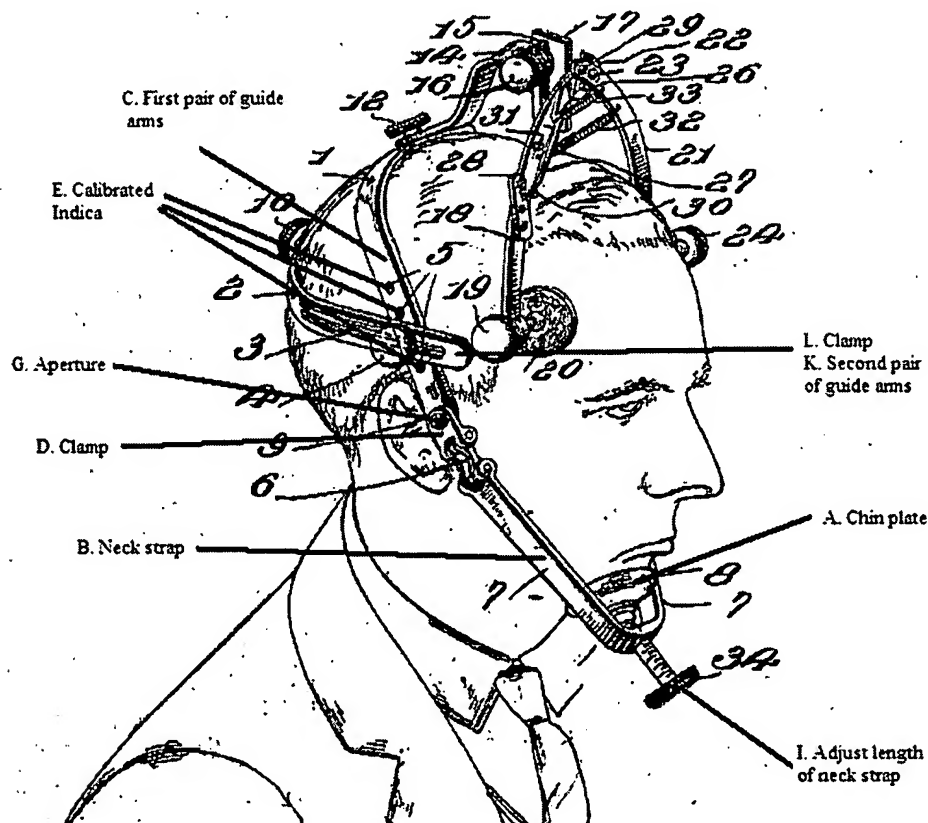
A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1,2,4,6,8-12, and 17 rejected under 35 U.S.C. 102(b) as being anticipated by Devine (U.S. Patent No. 1,557,988). Devine discloses a device containing a chin plate (A) having an inner and outer surface (column 2, lines 60-62). A removable

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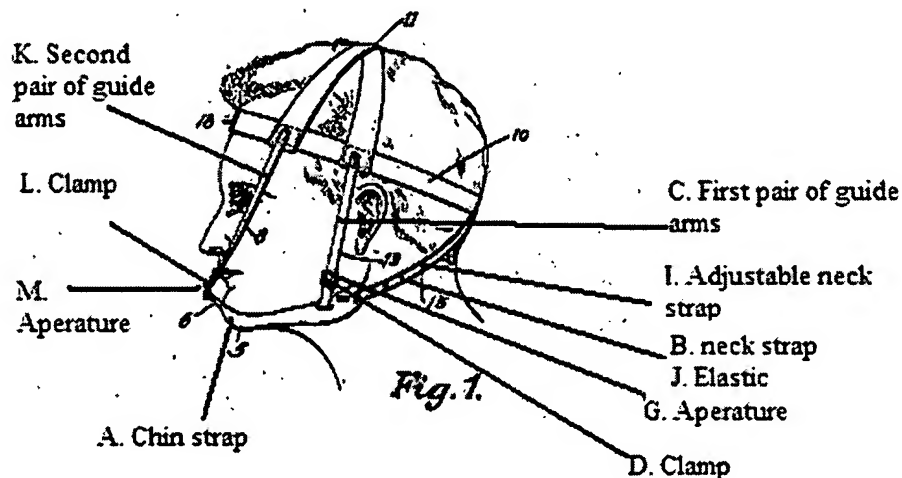
attached neck strap (B). A pair of guide arms having a proximal end and a distal end (C) with a clamping means disposed on the right and left side of the chin plate (D). Calibrated spaced indicia on the first set of guide arms (E), and a clamping means containing an aperture (G), and an adjustable neck strap length (I). Devine also discloses a second pair of guide arms (K), and a second pair of clamping means (L) where the clamping means has an aperture (G) in each portion to receive the guide arms. See Figure below.



7. Claims 1,4,6,7-12,15,17,18 are rejected under 35 U.S.C. 102(b) as being anticipated by Rothenberger (U.S. Patent No. 1,339,865). Rothenberger discloses an invention containing a chin plate have an inner and outer surface (A) (column 2, lines 60-61). A removable attached neck strap (B) (column 2, lines 60-70). A first pair of

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guide arms having a proximal end and a distal end (C), and a clamping means (D) and the clamping means comprising an aperture (G). The invention also discloses an adjustable neck strap (I), wherein the neck strap is elastic (J) (column 2, lines 90-93). A second pair of guide arms (K), and a second pair of clamping means (L) having an aperture (M). See Figure below.



### ***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 3,7,14,18 are rejected under 35 U.S.C. 103(a) as being unpatentable.

Devine discloses the claimed invention except for the plate being made from a plastic material (claim 3), or the strap being made from elastic material (claim 7). It would have

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been obvious to one having ordinary skill in the art at the time the invention was made to construct the device of Devine with the plate being made from plastic, and the strap being made from elastic material, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. In re Leshine, 125 USPQ 416.

10. With regard to claims 5 and 16, it would have been further obvious to one having ordinary skill in the art at the time the invention was made to construct the device of Devine with the pairs of guide arms each being approximately 3-4 inches in length and approximately 1/8 – 1/4 inches in diameter, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. In re Aller, 105 USPQ 233.

11. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Rothenberger (U.S. Patent No. 1,339,865) in view of Chapman (U.S. Patent No. 4,144,594). Rothenberger discloses the claimed invention except for the calibrated spaced indicia disposed on the first and second pairs of guide arms. However, Chapman teaches the use of a decoration technique for use in crafts which may be adapted toward decoration a wide variety of insignias, letters, numbers, trademarks, or other desired indicia (column 2, lines 44-48). Therefore, it would have been obvious to one skilled in the art at the time of the invention to add insignias onto the guide arms of Rothenberger for anesthetic purposes or for measuring the change of length of the clamp.

**Conclusion**


12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. U.S. Patent No. 1,091,372 S. Mickelson, U.S. Patent No. 1,738,143 L.C. Hickok, U.S. Patent No. 2,455,451 Tully, U.S. Patent No. 1,494,488.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rachel A. Running whose telephone number is (571) 272-1917. The examiner can normally be reached on Monday-Friday 8:00 am - 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver can be reached on (571) 272-4720. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

RAR

  
**EDUARDO C. ROBERT**  
PRIMARY EXAMINER